

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 04 June 2004

Case No.: 2003-BLA-6069

In the Matter of:

JAMES T. BRUCE,
Claimant

v.

LEMMONS COMPANY, INC.,
Employer

COMMERCIAL UNION INSURANCE COMPANY,
Carrier

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,
Party-in-Interest

APPEARANCES:¹

Robert S. Peppiatt, Esq.
For the Claimant

Philip J. Reverman, Jr., Esq.
For the Carrier

BEFORE: Robert L. Hillyard
Administrative Law Judge

DECISION AND ORDER - DENIAL OF BENEFITS

This proceeding arises from a claim filed by James T. Bruce for benefits under the Black Lung Benefits Act of 1977, 30 U.S.C. §§ 901, *et seq.*, as amended ("Act"). In accordance with the Act, and the regulations issued thereunder, this case was referred to the Office of Administrative Law Judges by the Director, Office of Workers' Compensation Programs, for a formal hearing.

¹ The Director, OWCP, and the Employer were not represented at the hearing.

Benefits under the Act are awarded to persons who are totally disabled within the meaning of the Act due to pneumoconiosis, or to the survivors of persons who were totally disabled at the time of their death or whose death was caused by pneumoconiosis. Pneumoconiosis is a dust disease of the lungs arising out of coal mine employment, and is commonly known as black lung.

A formal hearing in this case was held in Evansville, Indiana, on February 20, 2004. Each of the parties was afforded full opportunity to present evidence and argument at the hearing as provided in the Act and the regulations issued thereunder, which are found in Title 20 of the Code of Federal Regulations. Regulation section numbers mentioned in this Decision and Order refer to sections of that Title.

The findings and conclusions that follow are based upon my observation of the appearance and the demeanor of the witnesses who testified at the hearing, and upon a careful analysis of the entire record in light of the arguments of the parties, applicable statutory provisions, regulations, and pertinent case law.

I. Statement of the Case

The Claimant, James T. Bruce, filed a claim for black lung benefits pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, on June 10, 2002 (DX 3).² A Notice of Claim was issued on July 22, 2002, identifying Lemmons Company, Inc., as the putative responsible operator (DX 16). The Employer did not file a Response or otherwise controvert the Notice of Claim. The District Director, OWCP, made an initial determination of nonentitlement (DX 18). The Claimant requested a formal hearing and the claim was referred to the Office of Administrative Law Judges on June 11, 2003 (DX 25). A hearing was held in Evansville, Indiana, on February 20, 2004, before the undersigned Administrative Law Judge.

The Claimant previously filed a claim for benefits on January 8, 1980. That claim was denied by the District Director on August 21, 1981, because the Miner failed to establish any of the elements of entitlement. The Miner requested a formal hearing and his claim was dismissed by Administrative Law

² In this Decision, "DX" refers to the Director's Exhibits, "CO" refers to the Carrier's Exhibits and "Tr." refers to the transcript of the February 20, 2004 hearing.

Judge Musgrove by Order dated September 6, 1984, because the Miner did not appear at his scheduled hearing.

II. Issues³

The controverted issues as listed on Form CM-1025 are as follows:

1. Whether the Miner has pneumoconiosis as defined by the Act and the regulations;
2. Whether the Miner's pneumoconiosis arose out of coal mine employment;
3. Whether the Miner is totally disabled;
4. Whether the Miner's disability is due to pneumoconiosis;
5. Whether the Miner established a material change in condition pursuant to § 725.309(d);
6. The number of years that the Miner worked in coal mine employment;
7. The Miner's number of dependents for purposes of augmentation of benefits;

III. Findings of Fact and Conclusions of Law

The Claimant, James T. Bruce, was born on February 26, 1925 (DX 3). He completed the ninth grade (DX 3). The Claimant has no dependents for purposes of augmentation of benefits (DX 3).

³ Commercial Union attempted to add the issue of responsible operator at the hearing. Commercial Union asserted that Lemmons Company had been held not to be the responsible operator in the Miner's 1984 claim (Tr. 33). The Carrier asserts that the responsible operator determination in the prior claim should be binding on this claim, as there was no subsequent exposure to coal dust (Tr. 33). In fact, the issue of responsible operator was never addressed by the District Director, as the Miner could not establish any years of coal mine employment (DX 1). Under § 725.463(a), a hearing shall be confined to those contested issues identified by the District Director. An Administrative Law Judge may consider a new issue only if such issue was not reasonably ascertainable by the parties at the time the claim was before the District Director. Section 725.463(b). As this issue was neither raised nor argued at the District Director level, I will not consider it in this Decision and Order.

The physicians' records note that the Miner has never smoked (see, e.g., DX 8, p. 2). I find that the Claimant is a nonsmoker.

Coal Mine Employment

The determination of length of coal mine employment must begin with § 725.101(a)(32)(ii), which directs an adjudication officer to determine the beginning and ending dates of coal mine employment by using any credible evidence.

On his application, the Claimant stated that he worked in coal mine employment for 25 years (DX 3). At the hearing, the Carrier conceded 20.43 years of coal mine employment (Tr. 9).

The Claimant's Employment History form lists coal mine employment from 1957 to 1972 (DX 5). The Claimant's FICA earnings worksheet shows coal mine employment with Lemmons & Co., Inc., between 1952-1975 with short gaps in coal mine employment during those years (DX 6). I find that the Claimant has established 20.43 years of coal mine employment based upon review of the FICA earnings worksheet. On his Employment History form, the Claimant stated that over the relevant period he was a coal truck driver, cutting machine operator, and mechanic (DX 5).

The Claimant's last employment was in the State of Indiana. Therefore, the law of the Seventh Circuit is controlling.

Responsible Operator

Lemmons Company, Inc., has not challenged the issue of responsible operator, and I find that Lemmons Company, Inc., is properly named as responsible operator pursuant to §§ 725.494, 725.495.

IV. Medical Evidence

X-ray Studies

	<u>Date</u>	<u>Exhibit</u>	<u>Doctor</u>	<u>Reading</u>	<u>Standard</u>
1.	01/24/04	CO 1	Repsher B reader ⁴	0/0	Good

⁴ A "B reader" is a physician who has demonstrated proficiency in assessing and classifying x-ray evidence of pneumoconiosis by successfully completing an examination conducted by or on behalf of the Department of Health and Human Services. See 42 C.F.R. § 37.51(b)(2).

2.	01/20/04	CO 1	Sellers	No pneumo.	Not listed
	<u>Comments:</u> No evidence of pneumoconiosis; no acute cardio-pulmonary disease.				
3.	10/18/02	DX 13	Gaziano B reader	No pneumo.	Fair
4.	10/18/02	DX 12	Whitehead B reader Board cert. ⁵	0/1 p/q	Good

Pulmonary Function Studies

	<u>Date</u>	<u>Ex.</u>	<u>Doctor</u>	<u>Age/Hgt</u> ⁶	<u>FEV₁</u>	<u>MVV</u>	<u>FVC</u>	<u>Standards</u>
1.	01/20/04	CO 1	Repsher ⁷	78/71" Post-Bronch.	1.43 1.60	N/A	2.14 2.59	Tracings included. Poor coop./comp.
2.	10/18/02	DX 10	Houser	77/70.5" Post-Bronch.	2.11 2.44	N/A	3.26 3.62	Tracings included. Good coop./comp.

Arterial Blood Gas Studies

	<u>Date</u>	<u>Exhibit</u>	<u>Physician</u>	<u>pCO₂</u>	<u>pO₂</u>
1.	01/20/04	CO 1	Repsher	41.1	72.9
2.	10/18/02	DX 9	Houser Post-Exercise	37.4 37.3	82.8 97.9

Narrative Medical Evidence

1. Dr. William Houser, who lists no medical specialty credentials, examined the Claimant on October 18, 2002 (DX 8). Based on symptomatology (dyspnea, cough), employment history (15-16 years coal mine employment), individual and family histories (heart disease, diabetes, cancer, asthma), smoking history (nonsmoker), physical examination (lungs normal, clear

⁵ A Board-certified Radiologist is a physician who is certified in Radiology or Diagnostic Roentgenology by the American Board of Radiology or the American Osteopathic Association. See § 718.202(a)(ii)(C).

⁶ The factfinder must resolve conflicting heights of the miner recorded on the ventilatory study reports in the claim. *Protopappas v. Director, OWCP*, 6 B.L.R. 1-221 (1983). I find the Miner's height to be 71".

⁷ Dr. Repsher invalidated the results of this test due to very poor effort and coughing during the test.

to percussion and auscultation), chest x-ray (0/1), pulmonary function study (moderately severe airway obstruction), arterial blood gas study (normal), and an EKG (atrial fibrillation, possible inferior wall myocardial infarction, complete right bundle block), Dr. Houser diagnosed chronic obstructive pulmonary disease, atrial fibrillation, and hypertension. He listed the etiology of the COPD as exposure to coal and rock dust arising from coal mine employment. He opined that the Miner suffers from a moderately severe impairment caused by COPD.

2. Dr. Lawrence Repsher, a Board-certified Internist, Pulmonologist, Medical Examiner, Critical Care Specialist, and a B reader, examined the Miner and issued a January 26, 2004, written report (CO 1). Based on symptomatology (dyspnea, cough), employment history (30+ years, 4 underground), individual and family histories (hypertension, diabetes), smoking history (nonsmoker), physical examination (frequent cough, breath sounds normal, bibasilar inspiratory rales, no rhonchi or wheezes), chest x-ray (0/0), CT scan (no coal workers' pneumoconiosis), pulmonary function study (invalid due to "extremely poor effort and cooperation"), arterial blood gas study (borderline hypoxemia), and an EKG (atrial fibrillation, right axis deviation, right bundle branch block, and probably old inferior myocardial infarction), Dr. Repsher diagnosed no coal workers' pneumoconiosis or any other pulmonary or respiratory disease caused by coal mine employment. He supported his diagnosis with negative chest x-rays, arterial blood gas evidence showing "very mild" mild hypoxemia due to hypercarbia, and the lack of interpretable pulmonary function testing.

3. Dr. Ralph A. Sellers, who lists no medical specialty credentials, interpreted a January 20, 2004 CT scan and issued a written report (CO 1). He diagnosed: 1) Status post left nephrectomy; 2) Evidence of pulmonary parenchymal metastatic disease; 3) Old healed granulomatous disease of the chest and spleen; 4) 4.7 cm ascending aortic aneurysm; 5) Coronary artery calcification; 6) Previously described fatty infiltration of the liver no longer evident; 7) Infiltrate in left upper lobe markedly improved; and, 8) Slightly enlarged precarinal lymph node, unchanged.

V. Discussion and Applicable Law

The Claimant filed this black lung benefits claim on June 10, 2002 (DX 3). Because this claim was filed after

March 31, 1980, the effective date of Part 718, it must be adjudicated under those regulations.⁸

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. § 718, the claimant must establish that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. See 20 C.F.R. §§ 718.3, 718.202, 718.203, 718.204; *Peabody Coal Co. v. Hill*, 123 F.3d 412, 21 B.L.R. 2-192 (6th Cir. 1997); *Trent v. Director, OWCP*, 11 B.L.R. 1-26 (1987). Failure to establish any of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 B.L.R. 1-1 (1986) (*en banc*).

Material Change in Conditions

The amended regulations contain a threshold standard that the Claimant must meet before his claim may be reviewed *de novo*.

A subsequent claim shall be processed and adjudicated under the provisions of subparts E and F of this part, except that the claim shall be denied unless the claimant demonstrates that one of the applicable conditions of entitlement ... has changed since the date upon which the order denying the prior claim became final.... For example, if the claim was denied because the miner did not meet one or more of the eligibility criteria contained in part 718 of this sub-chapter, the subsequent claim must be denied unless the miner meets at least one of the criteria that he or she did not meet previously.

Section 725.309(c)-(d).

The Claimant's first claim was denied because the Claimant did not establish any of the elements necessary for entitlement (DX 1). To obtain the right to a *de novo* review of his subsequent claim, therefore, the Claimant must first establish the existence of pneumoconiosis or total disability due to pneumoconiosis or his claim must be denied without further review pursuant to § 725.309(c)-(d).

⁸ Amendments to the Part 718 regulations became effective on January 19, 2001. Section 718.2 provides that the provisions of § 718 shall, to the extent appropriate, be construed together in the adjudication of all claims.

Pneumoconiosis

Section 718.202 provides four means by which pneumoconiosis may be established. Under § 718.202(a)(1), a finding of pneumoconiosis may be made on the basis of x-ray evidence. The record contains four interpretations of three different chest x-rays.

The Board has held that an Administrative Law Judge is not required to defer to the numerical superiority of x-ray evidence, *Wilt v. Wolverine Mining Co.*, 14 B.L.R. 1-65 (1990), although it is within his or her discretion to do so, *Edmiston v. F&R Coal Co.*, 14 B.L.R. 1-65 (1990). However, "administrative factfinders simply cannot consider the quantity of evidence alone, without reference to a difference in the qualifications of the readers or without an examination of the party affiliation of the experts." *Woodward v. Director, OWCP*, 991 F.2d 314 (6th Cir. 1993).

Interpretations of B readers are entitled to greater weight because of their expertise and proficiency in classifying x-rays. *Vance v. Eastern Assoc. Coal Corp.*, *Aimone v. Morrison Knudson Co.*, 8 B.L.R. 1-32 (1985); 8 B.L.R. 1-68 (1985). Physicians who are Board-certified Radiologists as well as B readers may be accorded still greater weight. *Woodward v. Director, OWCP*, 991 F.2d 314, 316 n.4 (6th Cir. 1993).

All four x-ray interpretations were negative for pneumoconiosis. Three of the four interpretations were by B readers and/or Board-certified Radiologists. I find that the existence of pneumoconiosis has not been established pursuant to 20 C.F.R. § 718.202(a)(1).

Section 718.202(a)(2) is inapplicable because there are no biopsy or autopsy results. Section 718.202(a)(3) provides that pneumoconiosis may be established if any one of the several presumptions are found to be applicable. In the instant case, § 718.304 does not apply because there is no x-ray, biopsy, autopsy, or other evidence of large opacities or massive lesions in the lungs. Section 718.305 is not applicable to claims filed after January 1, 1982. Section 718.306 is applicable only in a survivor's claim filed prior to June 30, 1982.

Under § 718.202(a)(4), a determination of the existence of pneumoconiosis may be made if a physician exercising reasoned medical judgment, notwithstanding a negative x-ray, finds that the miner suffers from pneumoconiosis as defined in § 718.201. Pneumoconiosis is defined in § 718.201 as a chronic dust disease of the lung, including respiratory or pulmonary impairments,

arising out of coal mine employment. This definition includes both medical, or "clinical" pneumoconiosis and statutory, or "legal" pneumoconiosis.

(1) *Clinical Pneumoconiosis*. "Clinical pneumoconiosis" consists of those diseases recognized by the medical community as pneumoconiosis, i.e., conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

(2) *Legal Pneumoconiosis*. "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment.

Section 718.201(a).

For a physician's opinion to be accorded probative value, it must be well reasoned and based upon objective medical evidence. An opinion is reasoned when it contains underlying documentation adequate to support the physician's conclusions. See *Fields v. Island Creek Coal Co.*, 10 B.L.R. 1-19, 1-22 (1987). Proper documentation exists where the physician sets forth the clinical findings, observations, facts, and other data on which the diagnosis is based. *Id.* A brief and conclusory medical report which lacks supporting evidence may be discredited. See *Lucostic v. United States Steel Corp.*, 8 B.L.R. 1-46 (1985); see also, *Mosely v. Peabody Coal Co.*, 769 F.2d 357 (6th Cir. 1985). Further, a medical report may be rejected as unreasoned where the physician fails to explain how his findings support his diagnosis. See *Oggero v. Director, OWCP*, 7 B.L.R. 1-860 (1985).

Dr. Repsher, a Board-certified Internist, Pulmonologist, Medical Examiner, Critical Care Specialist, and a B reader, opined that the Miner did not suffer from pneumoconiosis or any other pulmonary or respiratory disease caused by coal mine employment. He based that diagnosis on physical examination, negative chest x-ray, and CT scan, and on arterial blood gas

readings. He further noted that the pulmonary function testing performed was invalid due to poor effort. Dr. Repsher's opinion is well reasoned. He supported his diagnosis with objective testing results, and explained the mild hypoxemia shown in the arterial blood gas study as due to hypercarbia. Noting Dr. Repsher's superior credentials, I afford his opinion substantial weight.

Dr. Houser, who lists no medical specialty credentials, diagnosed chronic obstructive pulmonary disease with an etiology of exposure to coal and rock dust arising out of coal mine employment. Dr. Houser's opinion is not well reasoned. While he opines that coal dust exposure was the cause of the Miner's COPD, he fails to discuss how the level of exposure was responsible for the disease. He further fails to discount a normal physical examination, a negative chest x-ray, and a normal arterial blood gas study. Dr. Houser does not explain his diagnosis, and the objective evidence does not support his conclusion. Noting Dr. Houser's lack of medical specialty credentials, I afford this opinion little weight.

Dr. Sellers, who presents no medical specialty credentials, interpreted a CT scan and did not find evidence of pneumoconiosis. At present, "[t]he clinical diagnosis and follow up of pneumoconiosis in most workforces at risk for pneumoconiosis are still based on the changes in the lung visible by standard X-ray techniques." *Consolidation Coal Co. v. Director, OWCP*, 294 F.3d, 885, 892 (7th Cir. 2002) (quoting Q.T. Pham, *Chest Radiography in the Diagnosis of Pneumoconiosis*, 5(5) INT. J. TUBERC. LUNG DIS. 478 (2001)). CT scans, however, when evaluated by qualified experts, are "important diagnostic tools that have resulted in major improvements in the assessment of occupational lung disease." *Id.* Such qualified experts are generally "radiologists (some of whom may in addition be classified as B readers) who have specialized knowledge and have developed a certain expertise through years of training and experience interpreting this particular test." *Id.* at 894 (citing J.F. Wiot & O. Linton, *The Radiologist and Occupational Lung Disease*, 175(2), AM. J. ROENTGEN. 311 (2000)). A Pulmonologist may have the knowledge, training, and experience to review a CT scan and reliably discuss whether the test discloses the presence of pneumoconiosis, but a party must qualify an individual Pulmonologist as such an expert. *Id.* Further, the results of a CT scan must be interpreted in conjunction with the occupational history, clinical examination, pulmonary function tests, x-rays, arterial blood gas tests, and the reasoned opinions of all the experts and physicians. *Id.* at 892. While I note that Dr. Sellers is not listed as either a Radiologist or a qualified Pulmonologist, I find that his

opinion is supportive of Dr. Repsher's opinion of no pneumoconiosis.

Taken as a whole, Dr. Repsher, a Pulmonary Specialist and B reader, provides a well-reasoned opinion, based upon objective medical evidence, that the Claimant does not suffer from pneumoconiosis as defined in § 718.201. His opinion is supported by Dr. Sellers. The opinion of Dr. Houser is not well reasoned. Accordingly, I find that the Claimant has not established the existence of pneumoconiosis under § 718.202(a)(4).

The Claimant has failed to establish a material change in conditions on the issue of pneumoconiosis pursuant to § 725.309(d).

Causal Connection Between Pneumoconiosis and Coal Mine Work

Because the Claimant has not established pneumoconiosis, the question of whether it is caused by his coal mine employment is moot. Moreover, even though the evidence establishes more than 10 years of coal mine work, any presumption of a causal connection with coal mine employment is more than adequately rebutted by the medical opinion evidence discussed above. Therefore, the evidence fails to establish this element of the claim.

Total Disability

Since the Miner does not have pneumoconiosis, his claim cannot succeed. In any event, had he established the existence of the disease, the evidence does not show that he had a totally disabling respiratory or pulmonary ailment which could be attributed to pneumoconiosis. Total disability is defined as the miner's inability, due to a pulmonary or respiratory impairment, to perform his or her usual coal mine work or to engage in comparable gainful work in the immediate area of the miner's residence. Section 718.204(b)(1)(I) and (ii). The Claimant must establish by a preponderance of the evidence that his pneumoconiosis was at least a contributing cause of his total disability. See, e.g., *Jewell Smokeless Coal Corp. v. Street*, 42 F.3d 241 (4th Cir. 1994). Total disability can be established pursuant to one of the four standards in § 718.204(b)(2) or through the irrebuttable presumption of § 718.304, which is incorporated into § 718.204(b)(1). The presumption is not invoked here because there is no x-ray evidence of large opacities and no biopsy or equivalent evidence.

Where the presumption does not apply, a miner shall be considered totally disabled if he meets the criteria set forth in § 718.204(b)(2), in the absence of contrary probative evidence. The Board has held that under § 718.204(c), the precursor to § 718.204(b)(2), all relevant probative evidence, both like and unlike, must be weighed together, regardless of the category or type, to determine whether a miner is totally disabled. *Shedlock v. Bethlehem Mines Corp.*, 9 B.L.R. 1-195, 1-198 (1986); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 B.L.R. 1-231, 1-232 (1987).

Section 718.204(b)(2)(i) permits a finding of total disability when there are pulmonary function studies with FEV₁ values equal to or less than those listed in the tables and either:

1. FVC values equal to or below listed table values; or,
2. MVV values equal to or below listed table values; or,
3. A percentage of 55 or less when the FEV₁ test results are divided by the FVC test results.

The record contains two pulmonary function studies. The January 20, 2004 test was found to be invalid by Dr. Repsher, the administering physician, because of "extremely poor effort and cooperation." Little or no weight may be accorded to a ventilatory study where the miner exhibited poor cooperation or comprehension. *Houchin v. Old Ben Coal Co.*, 6 B.L.R. 1-1141 (1984); *Runco v. Director, OWCP*, 6 B.L.R. 1-945 (1984); *Justice v. Jewell Ridge Coal Co.*, 3 B.L.R. 1-547 (1981). I find the January 20, 2004 pulmonary function test to be invalid and accord it no probative weight. The October 18, 2002 pulmonary function test produced nonqualifying readings. I find that the pulmonary function evidence does not support total disability.

Total disability may be found under § 718.204(b)(2)(ii) if there are arterial blood gas studies with results equal to or less than those contained in the tables. The record contains two arterial blood gas studies, both of which resulted in nonqualifying values.

There is no evidence presented, nor do the parties contend that the Claimant suffers from cor pulmonale or complicated coal workers' pneumoconiosis.

Under § 718.204(b)(2)(iv) total disability may be found if a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques, concludes that a miner's respiratory or pulmonary condition prevented the miner from engaging in his usual coal

mine work or comparable and gainful work. There are no medical narratives in the record which make a total disability determination. I find that the narrative evidence is silent on the issue of total disability and therefore, is not probative on the issue of total disability.

As a result of the normal pulmonary testing, normal blood gas testing, and the absence of a well-reasoned opinion that the Claimant suffers from a pulmonary or respiratory disability, I find the Claimant has failed to establish total disability due to pneumoconiosis arising out of coal mine work under § 718.204(b)(2). The Claimant has failed to establish a material change of conditions on this issue pursuant to § 725.309(d).

As a result, the Claimant has failed to establish a material change in condition on any element of entitlement previously adjudicated against him. Pursuant to § 725.309, his claim must be denied without further review as a matter of law.

VI. Entitlement

James T. Bruce, the Claimant, has not established entitlement to benefits under the Act.

VII. Attorney's Fee

The award of an attorney's fee is permitted only in cases in which the claimant is found to be entitled to benefits under the Act. Since benefits are not awarded in this case, the Act prohibits the charging of any fee to the Claimant for representation services rendered in pursuit of the claim.

VIII. ORDER

It is, therefore,

ORDERED that the claim of James T. Bruce for benefits under the Act is hereby DENIED.

A

Robert L. Hillyard
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 20 C.F.R. § 725.481, any party dissatisfied with this Decision and Order may appeal it to

the Benefits Review Board within thirty (30) days from the date of this Decision by filing a Notice of Appeal with the Benefits Review Board at P.O. Box 37601, Washington, D.C., 20013-7601. A copy of a Notice of Appeal must also be served upon Donald S. Shire, Esq., 200 Constitution Avenue, N.W., Room N-2117, Washington, D.C., 20210.